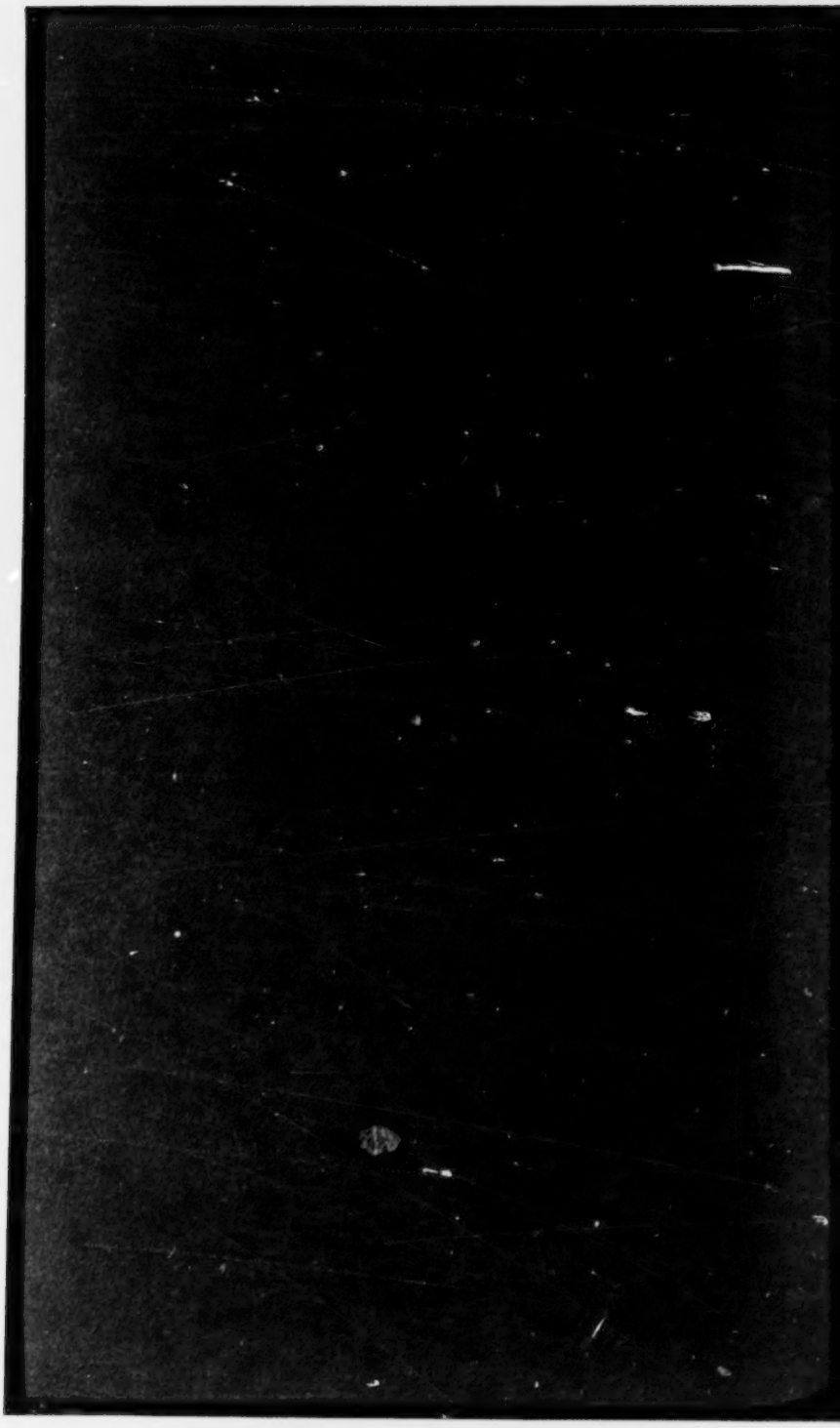

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IN THE

Supreme Court of the United States

October Term, 1955.
No. 510

GUS O. BROWN and OSCAR CASTRO, individually and as Business Agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association; ERNEST MARSH and HENRY B. HOLMES, individually and as organizers of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association; KRUGER CLARK, LAWRENCE TURNER, JACOB LEHMAN, SOL STEINHARD, DAN QUIJARDA, PETER BEEKES, LOUISA TOCCI, MARK ROBINSON, JOE N. OLIVER, and ROBERT BURRI, individually and as officers and agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association, FURNITURE WORKERS, UPHOLSTERERS AND WOOD WORKERS UNION, Local 576 (INDEPENDENT), a voluntary unincorporated association; LOUIS COTA, JR., individually and as President thereof; GUILLERMO NAVARROS, individually and as Financial Secretary thereof; HENRY MOBLEY, individually and as Treasurer thereof,

Petitioners,

vs.

MORRIS PIZER, individually and as International President, and WILLIAM GILBERT, individually and as International Representative of and Members and representatives of the members of the United Furniture Workers of America, a voluntary unincorporated association, ALEX O. RIVERA, FRANK JONES, GEORGE B. TRIPP, FRANCES CARR, CHRIS LAGUTARIS, and ETHEL KIGGINS, individually and as members of and representatives of the members of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association,

Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Two.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Jurisdiction.

Respondents contend, for the reasons pointed out below, that this Court has no jurisdiction and that jurisdiction under 28 U. S. C. 1257(3) is improperly invoked by petitioners.

Constitutional Provisions and Statutes Involved.

Respondents likewise contend that there are no federal constitutional or statutory provisions involved in this case.

Questions Presented.

1. Whether there are any federal questions in this case;

2. Whether, if there are any federal questions, they were timely raised in the court below;

3. Whether a group of individual members of a local union who attempt to secede from the parent body, the International Union, in violation of the constitution of the International, may take with it (the seceding group of individuals) the name, funds, properties and other assets of the original local?

Statement of the Case.

Respondents are dissatisfied with petitioners' statement of the case; hence present herewith their own. (Rule 40(3) of this court.)

1. Preliminary Statement.

Respondents[1] brought this action on behalf of United Furniture Workers of America, CIO, herein called the International, and on behalf of Local Union 576, United

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[1]In California, wherein this action was commenced, it is necessary for an unincorporated association, as plaintiff, to bring the action in the name of individuals, who sue individually and in their representative capacities, and "for and on behalf of the members of" the plaintiff-union. *Kadota Fig Association v. Case Swayne Co.*, 73 Cal. App. 2d 796, 802. However, under California Code of Civil Procedure, Sec. 388, an unincorporated association may be sued as a defendant in its own name. [See the Pleadings, Clk. Tr. 1, 39, 42.]

Furniture Workers of America, CIO, herein called Local 576, CIO, to enjoin the individual petitioners and Furniture Workers, Upholsterers and Woodworkers Union Local 576 Independent, herein called Independent, from disbursing and concealing the funds of Local 576, CIO, to prevent petitioners' use of the property of Local 576, CIO, to enjoin the use, by petitioners of the name and number of Local 576, CIO, and to recover from petitioners the funds, property and other assets of the original union, Local 576, CIO.

Contrary to the statements of petitioners and the impression sought to be created in petitioners' "Statement of the Case" (Pet. pp. 5-16), this is not a proceeding by an international union against one of its own locals but rather an action by the International and its Local 576, CIO, against a group of individuals who attempted to secede from the original local, and against the Independent which the secessionists attempted to establish and maintain as an alleged successor to Local 576, CIO.

2. Relationship of the International to the Local.

The relationship between the International and its Locals is determined by the International constitution.

Under the Constitution [Ex. 1] of the International, the International is the controlling body and the "life giving" source of the existence of any local. The International is an organization of workers, of people, of individuals, and not of "locals." Throughout the Constitution do we find this thought, again and again made certain. Thus, in the "Preamble" we find this language:

> "Realizing that we must adopt a form of organization that will most effectively serve to protect and defend our interest and improve our conditions as

wage earners.[2] We, the United Furniture Workers of America have adopted . . ."

The "Local Officers' Pledge," and "New Members' Pledge," bind all those subscribing thereto to the International, as well as to the Local.

Similarly, Article II "Objects" Section, states:

"(a) To unite in our International all *workers* embraced in our jurisdiction.

"(b) To establish wage standards adequate to maintain a decent American standard of living for all *workers* in our industry.

* * * * * * * *

"(d) To reach and maintain agreements with employers as to wages, hours of labor and working conditions and to seek through such agreements to establish maximum job and union security for *members* of the United Furniture Workers of America."

The Jurisdiction of the International, Article III of the Constitution is described, in part, as follows:

"Section 1. The jurisdiction of the United Furniture Workers of America shall consist *of all workers* employed in or about the plants of manufacturers of furniture and kindred products; . . ."

Further emphasis appears in Article V, Sections 4 and 7, and Article VII, Section 5, wherein representation of subordinate locals and voting at conventions is determined by *membership* in good standing in the International.

The foregoing references, and others, establish the fact that the International is comprised of individuals, and the

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[2]All italics in this Brief have been supplied, unless otherwise noted.

International officers are obligated to protect the rights of the members in fulfilling the objectives of the International.

The International is not a loose federation of autonomous locals. There exists an integrated and controlled relationship, under which the activities of the local are directed by and subordinated to the International.

Further examination of the Constitution indicates that in Article XIX, Section 1, the General Executive Board has power to settle disputes among the subordinate bodies; Section 7, to levy assessments; Section 12, to institute investigations of local unions; Article XXXII, to exonerate locals from payment of per capita; and Article XLIII, Section 4, to approve the action of the International President in issuing a charter which shall cause a division of an existing local.

Article IV, Section 1, provides for the General Executive Board to designate the place of the biennial convention. The General Executive Board, as well as the officers of the International are elected at the Convention by vote of the delegates.

In Article XV we find described some of the duties of the International President. Section 1 provides that he shall be the Chief Executive Officer of the International, preside over General Executive Board meetings, and International Conventions; *enforce all laws; and be ex officio* member of all committees.

Section 3, the importance of which will be discussed later, and which importance suggests that it be here set out in full, reads as follows:

> "Section 3. Whenever a dispute shall arise concerning the interpretation of this Constitution, or

rules of the International Union, such disputes shall be referred to the International President and his decision shall be binding as a law, subject, however, to appeal to the General Executive Board or further appeal to the International Convention."

It is the International President's duty, under Section 7, to supervise contracts in every district and, under Section 8 he is in complete charge of the Organizational Department.

Article XXIII provides for the establishment and maintenance of four Regions and eleven Districts, "to promote the objectives of the International Union," and requires that all locals "become part of their respective District Councils and shall be subject to the rules and regulations governing such Councils."

Locals must file complete certified or public accountant's reports with the International and, upon default, "the International Union shall have the right to send a representative to the Local who shall be empowered to examine the books of the Local." (Art. XXXI, Sec. 3.)

Under the requirements of Article XXXVIII, all by-laws of locals are subject to the approval of the International President and cannot be in conflict with any provisions of the Constitution, or any of the policies of the International.

Article XXXIX, Section 1, provides the detailed methods for disaffiliation of a local from the International. Sections 2 and 3 of said Article XXXIX provide:

"Section 2. So long as seven members remain or continue their affiliation with the local affiliate of the United Furniture Workers of America, the local shall be deemed to continue to exist and all property,

real or personal of whatsoever nature including assets, contracts, monies, accounts and all other properties and effects shall inure to, belong to and be the property of the local union. If fewer than seven members remain or continue their affiliation with the local after the procedure described in Section 1 of this Article has been complied with, the charter of said local shall be deemed to have been withdrawn and all other property, real or personal of whatsoever nature, including assets, shall revert to, inure, belong to and become the property of the United Furniture Workers of America.

"Section 3. No local union shall divide or distribute among its members, the funds, property and effects of the local union. Should any local union or officer or officers thereof remove any funds or properties from said local union or from any bank account in which said local union has its funds or any other property in contemplation or furtherance of disbandment, dissolution, secession, or disaffiliation from the United Furniture Workers of America or for any purpose inconsistent with this constitution or the constitution or by-laws of the local union, all such property, funds and effects shall for all purposes be deemed to be held by such local union or officer or officers thereof as trustees in trust for the United Furniture Workers of America to be turned over to it upon demand."

Article XL provides that no local may make an appeal for funds among other locals without the approval of the International President, and after such approval, the appeal shall be sent among the various locals through the International office.

Members in good standing in one local are entitled to a transfer card entitling them to membership in another local. (Art. XLI, Sec. 1.)

Article L provides that the Constitution may be amended by a majority vote at the International Convention, or "by a referendum vote of the *International Union's good standing members.*"

As will appear from an examination of the Charter [Ex. 3], there is no "jurisdiction . . . on a geographical basis." The Constitution, Article III, recites the jurisdiction in terms of occupations. Further, neither in the Constitution, nor in the Charter can be found any provisions or authority for exclusive grants, jurisdictionally or otherwise, to any local.

3. Chronology of Events.

a.

At its Cleveland, Ohio, convention in 1949, the Congress of Industrial Organizations, herein called "National CIO," or "CIO" authorized the CIO Executive Board, by a two-thirds vote, to expel any International Union "whose policies and activities are consistently directed toward the achievement of the program or the purposes of the Communist Party or other totalitarian movements." [Ex. 6, p. 18 of Ex. 5 id.; Exs. 11 and 12, pp. 16 and 17 of Ex. 5 id.] Charges thereafter were brought by National CIO against the International, seeking to expel the International from CIO, on the grounds that the International had consistently followed the Communist Party line. [Rep. Tr. pp. 186-187; Ex. 12, pp. 16 and 17 of Ex. 5 id.] International President Morris Pizer, one of the respondents herein, in November, 1949 (following the CIO Convention at Cleveland) at a convention of District Council 8, of the International, at Janesville, Wisconsin, publicly announced that he was supporting National CIO policy, and would recommend to the next International

Convention, in June, 1950, the adoption of a resolution supporting National CIO in its opposition to the Communist Party. It was this announcement by International President Pizer which deferred the trial of the International by the CIO until some time after the International Convention. [Rep. Tr. pp. 196, 197, 198, 199; Ex. 12, pp. 16 and 17 of Ex. 5 id.; and Ex. 16, pp. 117 to 119 of Ex. 5 id.] At the Janesville Convention, petitioner Marsh opposed the position taken by respondent Pizer.

The General Executive Board of the International met in New York from December 6 to 9, 1949, and President Pizer introduced his resolution in support of National CIO. Max Perlow, then Secretary-Treasurer of the International, and petitioner Marsh introduced an opposing resolution, referred to in the record as the "Perlow" resolution. The latter resolution was adopted by the General Executive Board. [Ex. 8, p. 43 of Ex. 5 id.; Rep. Tr. pp. 206-207.] The General Executive Board also voted, however, to refer both the pro-CIO resolution of Pizer, and what may be described as the anti-CIO resolution of Perlow, to the International Convention for final disposition. [Ex. 7, p. 17 of Ex. 5 id.]

From December 1949, to June 1950, Petitioners continued to manifest and make known their opposition to accepting and following National CIO policy. Petitioner Brown urged employees, at a public wage conference, to maintain their former policies. *". . . even if it means losing the CIO label."* [Ex. 62.] Petitioners' newspaper, in the issue of May 23, 1950, commenting on the International Convention scheduled for June, 1950, at Chicago, anticipated the coming battle in the following language:

> "The Convention to which Brown and Castro (Petitioners) were elected will center mainly on the

question of whether the Union will follow National CIO policy. . . ." [Ex. 47.]

This defiance by the local leadership of the National CIO's policy was not without disastrous effect upon the membership, the local and the International. On November 11, 1949, a majority of 115, of a total of 139 eligible members at the Superior Sleeprite Corporation in protest against the leaders of their local, petitioned for disaffiliation from Local 576 and reaffiliation with another CIO union. [Rep. Tr. pp. 83, 84, 85; Ex. 2.] Following meetings with CIO Regional Director DeShelter, and others, the employees became affiliated with the Textile Workers Union of America, CIO. [Rep. Tr. pp. 86-90.] On June 21, 1950, the employees sent a telegram to President Pizer, advising him that they ". . . are going elsewhere for a union home." [Ex. 4.] The record shows that the average membership for Local 576, for the first quarter of 1950 was 646 fewer members than for the corresponding period in 1948. [Exs. 5, 6, p. 79 of Ex. 5 id.]

At the Convention of the International in June, 1950. one of the principal issues (as correctly anticipated by petitioners [Ex. 47]), was whether the International would support National CIO. The pro-CIO adherents, identified in the Convention as the "Pizer" group, successfully and decisively prevailed over those who opposed the National CIO policy, identified in the Convention as the "Perlow" group. The respective positions of these groups are found in Exhibits 6, 7, 8, 11, 12 and 14, contained in Exhibit 5 for identification. The convention delegates voted 25,524 in support of the Pizer (pro-CIO resolution) and 6,307 in support of the Perlow resolution. Petitioners Brown and Marsh, representing Locals 576

and 577, supported Perlow. [Ex. 15, pp. 157, 158, 159 and 160 of Ex. 5 id.] Petitioner Marsh was a candidate for the office of President of the International and ran against respondent Pizer. The result of this vote was, for Pizer, 24,108 and for Marsh 7,234. [Ex. 20, pp. 228 and 229 of Ex. 5 id.]

Max Perlow ran for reelection as Secretary-Treasurer. In his acceptance of the nomination, he said:

> "I wish to muster all the support I can so that this can express the resentment of what is taking place now in the CIO and to what has taken place here at this Convention in the past few days . . . I would rather associate myself with . . . Harry Bridges and his struggle, with the Hollywood Ten and their struggles for their principles than with Jim Carey. . . ." (Jim Carey, with whom Perlow would rather not be associated was then Secretary of National CIO, and is now a Vice-President of AFL-CIO.)

Upon this platform, Perlow was defeated by a vote of 19,476 for Fred Fulford and 7,083 for Perlow. [Exs. 21 and 22, pp. 234, 235, 236 and 239 of Ex. 5 id.]

All candidates for all offices who were opposed to CIO policy were defeated. All those who stood on the Pizer program, were elected. [Rep. Tr. pp. 234, 236.]

In the light of subsequent events, *viz.:* the attempt by the petitioners to secede from the International, and take with them the assets, funds and property of Local 576, it is with interest that we observe at the Convention, the attempts by the anti-CIO or Perlow group, to amend the Constitution, to delete therefrom the section which provides that as long as seven members of any local remain, the funds, property and assets remain with the local, or in

the event less than seven members remain, then upon secession, or disaffiliation the funds, property and assets of the local shall become the property of the International. The references were to Article 40 of the then existing constitution, and what is Article 39 in Exhibit 1. [Rep. Tr. p. 232.] To have succeeded in the deletion of this clause, would have left the way open to the secessionists to properly accomplish that which was and remained illegal. Petitioners Brown and Marsh voted to change the Constitution. The final vote was 23,421 to continue the property clause in its present form, and 9,035 to change. [Exs. 17, 18 and 19, at pp. 201, 202, 203, 204, 210, 211, 21, 14 and 15 of Ex. 5 id.]

b.

After the International Convention respondent Pizer and officers of the International Executive Board visited Los Angeles to investigate the difficulties and differences in the local. [Rep. Tr. pp. 38, 239, 240.] The investigation disclosed that the members wanted a new local [Rep. Tr. pp. 922, 1059] or they would go to the AFL. [Rep. Tr. pp. 1075-1078.] The CIO Regional Director and other CIO leaders advised respondent Pizer that something had to be done to prevent loss of furniture workers from the CIO to the AFL or some other union. [Rep. Tr. pp. 1160, 1162, 1176, 1178, 1179.]

On or about July 9, 1950, respondent Pizer received a letter from Los Angeles, further reporting the conditions in Los Angeles and requesting a new charter. This letter [Ex. 23] reads in part as follows:

> "At a meeting of the Brown-Saltman Shop employees, all members of UFWA-576-CIO, on *June 22, 1950, by a unanimous vote—voted to leave Local 576, because its leadership are anti-CIO; anti-de-*

mocracy (sic) and because they are still carrying on a campaign against our Int'l Officers—they are only concerned in furthering the Communist program of Russia.

"On June 22, 1950, in voting to leave Local 576, our Chief Steward was instructed to contact you (Int'l Pres.) and *ask for the protection through the Int'l so as to remain within UFWA-CIO;* and if this was not possible then to contact the Nat'l CIO office here and make the same request, in order to remain in C.I.O. *because our membership are 100% for CIO,* however, *in the event that we did not receive any satisfaction either from our Int'l Union of (sic) the Natl'l CIO office locally then we would have no alternative but to seek a home elsewhere."*

The petition for a new charter [Ex. 24], which accompanied the letter referred to above, contains the following statements:

"WE DESIRE TO REMAIN IN THE UNITED FURNITURE WORKERS, CIO, AND WE ARE LOYAL TO IT. BECAUSE OF THIS FEELING, WE DO NOT DESIRE TO BE IN LOCAL 576 BECAUSE WE BELIEVE IT TO BE COMMUNIST DOMINATED AND BECAUSE ITS OFFICERS HAVE APPOINTED SHOP STEWARDS AGAINST THE WISHES OF THE MEMBERS AND HAVE PREVENTED THE ELECTED SHOP STEWARDS FROM FUNCTIONING.

"WE ARE IN DEADLY EARNEST, IF YOU DO NOT SEE FIT TO GRANT US SUCH A CHARTER, WE SHALL BE FORCED TO SEEK A HOME ELSEWHERE."

The workers, members of Local 576, CIO, had already taken steps to go over to an AFL union, and there was the threat and danger that others would leave

CIO unless a new local, one dedicated to the National CIO policy, was created. [Rep. Tr. p. 500.]

On August 1, 1950, respondent Pizer, as President of the International, with the approval and consent of the General Executive Board, issued a charter to Local 1010, United Furniture Workers of America, herein called Local 1010. [Rep. Tr. p. 130, Exs. 24, 25, 26.]

c.

At no time prior to the secession movement by the petitioners did the International take any action against the petitioners. The issuance of the charter to Local 1010 was not punitive nor retaliatory. The charter was issued for the sole purpose of preserving the membership within the International and within CIO. This action was consistent with the International Constitution and the practice thereunder. [Rep. Tr. pp. 504-509.]

4. Respondents' Position.

Respondents' case in the trial court, and its position as sustained by the reviewing courts, were based upon the simple proposition, supported by the law in California, that a seceding group of individuals has no rights to the name, funds and other assets of the original local. It was unequivocally stated that the International Union had a right to issue the charter to Local 1010, pursuant to the provisions of the constitution. The Trial Court so found. It was never the position of respondents that the right of the International was founded upon a prior breach of the agreement by the secessionists or that any alleged Communistic activities was the reason for the issuance of the new charter. Petitioner has quoted in part (Pet. p. 7) the position taken by respondents during the trial. Let us examine this position more fully.

Counsel for respondents stated [at Rep. Tr. p. 1306] the following:

> ". . . When the charter (to Local 1010) was issued as of August 1st there was no breach by the officers of Local 576 upon which action could be brought under the constitution. Such a breach did occur on August 16th, to take one date that has been fixed here, when an attempt was made to set up a rival organization and to appropriate the name and funds and property of 576 for the use of the rival organization. There is nothing in the constitution of the International Union or any of its rules or by-laws which says that the officers of any particular local cannot have political opinions or beliefs which are different from that of the International president or the majority in the International Union. We do not claim that because some of the officers of Local 576 may have disagreed on questions of policy with the International Union that the International Union would then have a right to expel those officers from the International or to revoke its charter. That is not our position. Our position, however, is that when the individual members of that local disagree for any reason—in this case apparently for political reasons—with the leaders of that particular local, and when those individuals and groups of them are taking steps to withdraw from the International Union and to go elsewhere, the International Union has a three-fold obligation: It has an obligation to the individual members of the union to try and keep them within the International Union, if they so desire; it has an obligation to the other locals of the International Union to see that the furniture workers in Los Angeles remain organized in the United Furniture Workers of America for the mutual protection of the wage rates and work-

ing conditions of other workers in the furniture in dustry outside of the Los Angeles area; and, thirdly it has an obligation to National CIO with whom th United Furniture Workers is affiliated to see tha the CIO membership through the Furniture Work ers Union in the Los Angeles area is protected an maintained. That is the reason it had a right t issue the charter, and that was the reason for whic it issued the charter."

5. International Did Not Breach Its Contract.

Among the "Reasons for Granting the Writ" petition ers assert (Pet. pp. 18, 22) that respondents and th Courts below "ignored" petitioners' contentions that th International was guilty of a breach of the Internationa constitution. These assertions were not ignored. They were put in issue by the pleadings, the Trial Court re ceived evidence in support and denial of these assertions the question was argued before the Trial Court, and th Court found, definitely, that the International did no breach its contract.

ARGUMENT.

I.

The Invocation by Petitioners of the Jurisdiction of This Court Under 29 U. S. C. 1257(3) Is Improper, Because (a) There Is No Federal Question in the Case and (b) the Alleged Federal Questions Were Not Timely Raised in the State Courts in Accordance With State Law and in Accordance With the Decisions of This Court.

A.

The Alleged Federal Questions Were Not Timely Raised.

Petitioners concede (Pet. p. 16) that the first time they raised the alleged federal questions was in their Petition for Rehearing filed with the District Court of Appeal. They claim (Pet. p. 17) that these alleged "federal constitutional issues were presented at the first possible opportunity" after they appeared in the case. As will be shown below, there are not now, and never have been, any federal questions in the case. But assuming, *arguendo*, that there were, the posture of the case now is no different from what it was before the trial court, at which stage petitioners admit (Pet. p. 17) the case involved "only questions of state contract law." (*Ibid.*)

The same incorrect charge that petitioners level against the Court below, based upon the straw man that the reason for that Court's decision is the Communist influence under which the petitioners were alleged to be, could by the same token, and should, have been levelled against the Trial Court. In that regard, the Trial Court and the Court below are no different. Thus the Trial Court found in its Findings of Fact [Clk. Tr. pp. 77-78]:

> "19. That the International did not breach its contract with Local 576 by the issuance of a Charter

to Local 1010, United Furniture Workers of America, CIO, hereinafter called Local 1010. That the CIO, at its Convention in 1949 adopted a policy to rid itself of those unions that persisted in following the Communistic line; that in furtherance of said policy and pursuant to it, the CIO had expelled or caused the disaffiliation of those international unions that had persisted in following the Communistic line; that there was a real danger that such expulsion or disaffiliation might occur to the International Union. That at its convention in June, 1950, the International Union adopted a resolution which resulted in a change of its policy and in the adoption of CIO policy. That the conduct and statement of defendants Gus O. Brown, Oscar Castro and Ernest Marsh at the convention of June, 1950 and following said convention, gave plaintiff, Morris Pizer and the International Union's General Executive Board reason to believe that the status of the International Union as an affiliate of CIO, would be in jeopardy unless some action were taken; that on the basis of warnings of CIO Regional Director, DeShelter, and other CIO leaders in Los Angeles, plaintiff Morris Pizer, had reason to believe that said DeShelter and other CIO leaders would step in and take action in connection with Local 576. That members of the General Executive Board of the International Union and rank and file members of Local 576 had advised plaintiff, Morris Pizer, of the condition and situation in Local 576, particularly in the loss of membership that did occur and which was threatened to occur. That the plaintiff Morris Pizer, by and with the consent of the General Executive Board of the International Union did issue a charter to Local 1010 on or about August 1, 1950, which charter was installed and presented to the membership of Local 1010 at Los Angeles, California, on or about Au-

gust 4, 1950. That the action taken by the plaintiff Morris Pizer, and the International Union's General Executive Board, namely, the granting of the charter to Local 1010 and the implementation thereof was right, proper and reasonably necessary to protect the International Union and its membership in Los Angeles and vicinity. That the issuance of the charter to Local 1010 was within the powers and authority of plaintiff Morris Pizer, as President, and the International Union's General Executive Board, as delegated and granted to them by the International Union's Constitution."

The same claim—invalid, it must be emphasized—petitioners make (Pet. p. 17) as to the Appellate Courts below that they were holding that "a union allegedly under Communist influence could have its contracts violated with impunity" should, therefore, have been made to the Trial Court, as the above quoted finding makes clear. Additionally, during a colloquy on the ruling on an objection during the very early stages of the trial, this occurred [Rep. Tr. p. 114]:

"The Court: Well, that is what I am more interested in: that that was the actuating motive of the employees in what they did in that regard?

Mr. Rissman: That is right, your Honor.

The Court: The belief that Mr. Brown and the group in control of 576 were Communists."

[Rep. Tr. p. 117]:

"The Court: . . . It would seem that we have a legal problem as to the effect upon 576, and when I speak of that I am speaking of it as a part of CIO, of a large portion of its membership leaving the organization. We also have the effect of that action upon the rights of the International, particu-

larly as to its rights to create a new union of simi lar character. Now, to that extent it would appea immaterial as to what the reasons of the individua members may have been, but it may become materia as to what the belief of the International was i regard to those that remained in 576—let's call them the Brown adherents—and as to whether that belief was well founded. Specifically, for example, if the International believed and was justified in believing that the Brown adherents were proceeding and would proceed in violation of the policies of CIO, particularly in regard to following the Communist Party line. . . ."

Later, this took place [Rep. Tr. p. 257]:

"The Court: I understand your position. I have yet to be convinced that the general executive board did not have the right to take whatever steps were reasonably necessary to protect the members of the local, to protect the International, and perhaps to protect the United States of America."

After which petitioners' counsel said [Rep. Tr. pp. 258-259]:

"I want at this time, if your Honor please, to make a motion for a mistrial based upon your Honor's last remark, upon the grounds that it indicates on the part of the Court a bias and prejudice against the defendants and cross-complainants with respect to a matter which is not even an issue in the case, there being no contention that these steps were taken to protect the interests of the United States of America, and there being not one word of evidence in the record here to the effect that anything was done in order to protect the interests of the United States of America. It seems to me, your Honor, in all fairness to these defendants and cross-complainants,

> that a judge who has formed the opinion that this is probably an issue in the case and that there is probably a right to act in order to protect something which it isn't even asserted is involved in the case and which is based, so far as this case is concerned, simply upon the hurling of charges with respect to the name 'Communist'—there is not one word of evidence in this record that they had done a single thing that they didn't have a perfect right to do as American citizens, as a trade union, as an organization, and I think under those circumstances your Honor's remark indicates a state of mind under which it is impossible for your Honor to render a fair judgment in this case, and I therefor make this motion for a mistrial."

In denying this motion for mistrial, the Trial Court said, *inter alia* [R. p. 260]:

> ". . . so far it is quite clear that the plaintiffs contend that the defendants were following, as the witnesses have stated, the Communistic line. . . ."

Accordingly, petitioners cannot claim that the alleged federal question which they now interject into the case was not present at the Trial Court level. Petitioners' view of the case then was, properly, that only state contract law was involved. It is interesting, in view of the record before the Trial Court, including its Finding No. 19, that petitioners now find no less than *seven* federal questions (Pet. pp. 3-5) whereas before the Trial Court, including at the time of the motion for new trial, to be mentioned below, they found none.

Petitioners filed, in the Trial Court, a notice of motion for new trial [Clk. Tr. pp. 87-88], and argued it. [Clk. Tr. p. 89.] Despite the fact that the elements of

the case which petitioners now assert present a federal question were, as seen, likewise in the case at that time, they did not then, and they did not in their briefs on appeal either raise or faintly suggest that any federal question was in the case.

Accordingly, petitioners' claim that the alleged federal questions did not appear in the case until the decision of the District Court of Appeal, is quite incorrect.

For salutory reasons this Court consistently holds that the federal claim must be asserted at the first opportunity. (*Michel v. Louisiana*, ... U. S. ....., 24 Law Week 4027, 4029.) This is especially true where, by state procedure, federal constitutional questions must be raised at the Trial Court level in order to be considered by the Appellate Courts. (*Hulbert v. Chicago*, 202 U. S. 275; *Brown v. Massachusetts*, 144 U. S. 573, 580; *Edelman v. California*, 344 U. S. 357.)

It will be noted that the District Court of Appeal denied a rehearing without opinion as did the California Supreme Court deny a hearing. Where this is the case, in the light of state law that a question to be considered on appeal must be raised in the Trial Court, this Court will decline to exercise jurisdiction. (*Mutual Life Ins. Co. v. McGrew*, 188 U. S. 291, 309.) In such a case, this Court assumes, there being no showing to the contrary (*cf. Charleston Federal Savings & Loan Ass'n v. Alderson*, 324 U. S. 182, 186) that the silence is due to the state procedural deficiency. (*Bailey v. Anderson*, 326 U. S. 203, 206-207.)

The following passage from Stern & Gressman's *Supreme Court Practice* (B. N. A. 1954), page 86, is precisely in point here:

> ". . . where the federal constitutional issue was not raised in the trial court, as required by state law, but was raised for the first time in a petition for rehearing addressed to the state intermediate court, the highest state court's action in refusing without opinion to hear the case precludes review on certiorari by the Supreme Court, *Stembridge v. Georgia*, 343 U. S. 541, 547. Such refusal by the highest court *might* have been based upon the adequate state ground that the constitutional issue was not raised in the trial court, as required. And the Supreme Court feels that it is without jurisdiction 'when the question of the existence of an adequate state ground is debatable." 343 U. S. at 547-8." (Italics in original.)

I.

California Procedure Requires the Raising of Federal Constitutional Questions in the Trial Court.

It goes without saying, of course, that state procedure which requires the raising of federal constitutional questions at the trial level is valid and will be given effect by this Court. (*Williams v. Georgia*, 349 U. S. 375, 383; *Brown v. Allen*, 344 U. S. 443, 486; *Michel v. Louisiana*, ... U. S. ....., 24 Law Week 4027, 4028.)

In California, questions not raised in a lower court will not be considered on appeal. (*MacKenzie v. Angle*, 82 Cal. App. 2d 254, 186 P. 2d 30; *Moran v. Bromley*, 112 Cal. App. 2d 520, 246 P. 2d 1001; *Imperial Valley Land Co. v. Globe Grain & Milling Co.*, 187 Cal. 352,

202 Pac. 129; *Douglas v. Southern Pac. Co.*, 203 Cal. 390, 264 Pac. 237; *Raphael's Estate*, 115 Cal. App. 2d 525, 252 P. 2d 979; *H. Moffat Co. v. Rosasco*, 119 Cal. App. 2d 432, 260 P. 2d 126.)

In *Imperial Valley Land Co. v. Globe Grain & Milling Co.*, 187 Cal. 352, 359, the California Supreme Court said:

> "This question, which the appellant now seeks to have us determine, was not raised in the lower court and cannot be determined upon this appeal."

In 3 Cal. Jur. 2d, Appeal and Error, page 604, Section 140, the rule is thus put:

> "It is a general rule of appellate review, early established and long adhered to, that questions not raised in the trial court will not be considered on appeal. . . . The rule is founded upon considerations of practical necessity in the orderly administration of the law and of fairness to the court and the opposite party, and upon the principles underlying the doctrines of waiver and estoppel. . . ."

The rule applies to constitutional questions. (*Hershey v. Reclamation District No. 108*, 200 Cal. 550, 254 Pac. 542; *Estate of Crane*, 73 Cal. App. 2d 93, 165 P. 2d 940.)

In the *Hershey* case, the California Supreme Court (200 Cal. at 564) quoted with approval and followed this rule from 12 C. J. 785:

> "It is a general rule applicable in civil cases that a constitutional question must be raised at the earliest opportunity or it will be considered as waived."

This was followed and quoted with approval in *Estate of Crane*, 73 Cal. App. 2d 93, 101, and is stated as the

California law in 11 Cal. Jur. 2d, Constitutional Law, page 404, Section 73.

Accordingly, the alleged federal questions, not having been timely raised below, the jurisdiction of this Court cannot be invoked.

B.

There Are No Federal Questions in This Case.

The belated assertion by petitioners that the case presents federal questions for review of this Court is incorrect on the merits.

The mainstay of petitioners' petition is the order granting certiorari by this Court in *Black v. Cutter Laboratories,* 43 Cal. 2d 788, 278 P. 2d 905 (No. 92, Oct. Term, 1955, this Court), an order which respondents applaud and with which they agree. Petitioners, skillfully, attempt to show a parallel between the two cases. But such a parallel is simply not present, as will be demonstrated on the merits as well as by the totally different views accorded the two cases both below and in this Court.

It is significant that the opinion of the Court below out of which petitioners now attempt to glean a federal question, cites not a single federal case. This is to be contrasted with the opinion in the *Cutter Laboratories* case which is replete with reliance upon decisions of this Court and federal statutes. It would seem that if there were a federal question in the case, at least somewhere along the line, some reference to federal law, constitutional or otherwise, would have been made. On the contrary, the decision of the Court below is based solely, and solidly, on state contractual law.

Moreover, in the *Cutter Laboratories* case, three of the seven justices of the California Supreme Court dissented. (43 Cal. 2d 809-814.) Not only has this Court said that the California Supreme Court "has not been insensitive to" claims "not unrelated to those now urged" (*Parker v. County of Los Angeles,* 338 U. S. 327, 332), but not one of the three dissenting justices in the *Cutter* case saw any occasion to even vote for a hearing. (Pet. Appx. C.)[3] It is to be noted that petitioners in their Petition for Hearing in the California Supreme Court (pp. 48 and 49) argued that the opinion of the District Court of Appeal extended the California Supreme Court's ruling in the *Cutter* case. Despite this, as noted, not one of the dissenting justices voted for a hearing.[4]

Furthermore, it will be noted that the Congress of Industrial Organizations, to which respondent union, the International, is affiliated, through its General Counsel, filed a brief *amicus curiae* in the *Cutter Laboratories* case in support of the petitioning union there, despite the fact that the union involved in that case was one which had been expelled from the CIO. No such questions found in the *Cutter* case are found by the CIO here. Not only has the CIO not filed a brief *amicus* here, but, as seen, its General Counsel is one of the attorneys for respondents here. Had the instant case appeared to present

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[3]Under California procedure, where the California Supreme Court denies a hearing, the votes of those justices voting for a hearing are recorded. See *Steiner v. Darby,* 88 Cal. App. 2d 481 at 498; *Pasadena Investment Co. v. Peerless Casualty Co.,* 132 Cal. App. 2d 328 at 331; *Bayer v. Otis,* 133 Cal. App. 2d 439 at 446.

[4]Not only (footnote 3, *supra*), are the votes of the justices who vote for a hearing recorded, but on closely divided questions even opinions are at times written by justices who dissent from the denial of a hearing. See *People v. Rochin,* 101 Cal. App. 2d 140, 143, 149; *Keiper v. Northwestern Pacific Railway Co.,* 45 A. C. 149.

issues akin to those in *Cutter*, the CIO would have taken the same position it took in the *Cutter* case, even against a position of one of its constituent unions. (*Cf. Syres v. Oil Workers Intl. Union, Local No. 23*, 223 F. 2d 739 (C. A. 5, 1955), cert. granted and revd. No. 390, Oct. Term, this Court, ... U. S. ....., 24 Law Week 3137.)

The suggestion that there are federal questions in this case is a spurious one. The case involves solely questions of state contract law, was decided on that basis and the jurisdiction of this Court is improperly invoked because the judgment below was based upon a non-federal ground, sufficient and adequate to sustain it.

This case involves the simple question as to whether a group of individual members of a local union who attempt to secede from the parent body, the International Union, in violation of the constitution of the International, may take with it (the seceding group of individuals) the name, funds, properties and other assets of the original local.

II.

The Decision of the Court Below on the Principal Issue, To-wit: Whether a Group of Members May Secede From a Parent Body and Take With It the Name, Funds, Property and Assets, Is Consistent With the Established Law of California.

The law in California is clear that the determination of this question rests upon the relationship created between the parties by their agreement, to-wit: the Constitution, the Charter and the By-laws. (*Scott v. Donahue*, 93 Cal. App. 126; *Radio Station KFH Company v. Musicians Association*, 169 Kan. 596, 608, 220 P. 2d 199, 205; *Killeen v. Hotel and Restaurant Employees*, 84 Cal. App. 2d 87; *De Mille v. American Federation, etc.*, 31

Cal. 2d 139.) The local in our case is a subordinate creature under the control and domination of the International. The local union exists subject to the will of the International, its charter having been granted and subject to revocation by the International. Especially, where, as here, the members are employed by several employers, the local needs the strong dominance and support of the parent body. As one Court has said:

> "The locals have some degree of administrative autonomy, but they are closely supervised. . . . Most important of all is the fact that the locals' own constitutions and by-laws are not effective until approved by the International."
>
> *Fitzgerald v. Abramson,* 89 Fed. Supp. 504 (S. D. N. Y.)

An examination of the International Constitution shows that the International is an organization of individual members, not of locals. The International exists for the benefit of its members, and not for the enhancement of any local or its business agent. The objectives are to improve the status of furniture workers, as individuals.

Further examination reevals that the International "holds a tight rein over the locals and they have no being separate and apart from the International." (*Brown v. Hook,* 79 Cal. App. 2d 781, at 787.) The International is given broad control over funds and property of the locals. No local can solicit other locals for funds except with the International's approval, and, if approval is granted, the funds must first be sent to the International, and by it sent to the soliciting local. A member of one local has a right to transfer to another local, upon changing employment. The very contract between the International and the local can be changed or amended

by a vote at the International Convention, or a referendum to the members of the International. The International has set up intermediate Regions and District Councils, with compulsory membership for each local, further strengthening the International's control over the local. Disputes among subordinate bodies are settled by the International, and all laws are enforceable by the International President. The President supervises the contracts in all districts and his interpretation of the Constitution is binding, subject only to review by the International Executive Board or the International Convention. The International Constitution outlines complete control over funds and properties of any movement of secession or disaffiliation, to the end that the funds and property will not go with or be used by the seceding or disaffiliating group.

From the foregoing, and other clauses of the constitution, we see that there exists a close integration between the International and its locals. The integration, and the dependence of the local upon the International, is practically identical with the situation considered by the Court in the case of *Brown v. Hook, supra.*

In recent years there have been many cases[5] which have considered this question.

In *Sessler v. Union Local 901,* 87 Fed. Supp. 447, (U. S., N. D. Ind.), the Court found in favor of the International, and said:

> ". . . a majority of the members of an unincorporated association can direct the use of funds

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[5]For a study of some of these cases, reference is made to the article of George Rose, *"The Relationship of the Local Union to the International Organization,"* November, 1952, Virginia Law Review, reprinted in 4 Labor Law Journal, 334 (May, 1953).

> of the association with the scope of the association's declared purposes, but a majority cannot, against the will of a minority, or even against the will of a single member, receive such funds for uses other than those permitted by the Constitution and the by-laws of the association."

In *Federation of Insurance Agents v. United Office and Professional Workers* (R. I. Sup. Ct.), 74 A. 2d 446, 18 Lab. Cas. No. 65862, the Local sued the International to restrain it from taking over the property of the Local. The Court concluded that the Local was subordinate to the Union Executive Board, that it was a creature of the executive Board. For example, the Constitution and the by-laws provided that new members must abide by the Constitution of the Union. There could be no increase in Local dues without the approval of the Union; a member of the Local could appeal to the International, the funds of the Local under the Constitution are a trust for the benefit of the Local to be used in accordance with the Constitution of the Union. From this it was construed by the Court that there was no real autonomy but that the Local was a creature of the International, and denied the requested injunction.

In another case, *Morrison v. Majestic Laundry System*, 10 N. Y. S. 2d 791, a local of the Amalgamated Clothing Workers of America, CIO, attempted to disaffiliate and join the Teamsters, AFL. An analysis of the Union Constitution by the Court showed that

(a) the seven-member continuing clause was present;

(b) that a charter was only given after approval;

(c) the local by-laws could not conflict with the Amalgamated Constitution;

(d) a worker could transfer from one local to another local;

(e) that in event of withdrawal by the Local, the books, records and funds and property shall be delivered to the General Secretary of the International.

The Court said that not even a majority of a local of a union may in violation of its charter provisions and in violation of the Constitution of its parent union secede as a local and carry with it all of the Local Union's property where there still remain the requisite members loyal to the parent union still willing to function as such. The Court went on to say that individuals may leave the Amalgamated and join the Teamsters but the Amalgamated local still existed.

In *Schnitzler v. Scida*, U. S. D. C., E. D. N. Y., 19 Lab. Cas. No. 66034, 27 L. R. R M 2025, a local of the AFL Bakers' Union wished to join CIO Retail, Wholesale & Department Store Union. AFL began a proceeding to enjoin the defendants from leaving the AFL and going to the CIO and taking any property with them. The Court referred to the seven-men clause in the Constitution and held that there could be no legal disaffiliation under those circumstances.

To the same effect is the case of *Feller v. Egelhofer*, decided October 15, 1953, N. Y. S. Ct. 33 L. R. R. M. 2139, and *Baker v. Hazel Park Raceway*, decided March 1, 1954, Mich. Cir. Ct. 34 L. R. R. M. 2080.

Those cases[6] which sustained the disaffiliation, decided the issues on the implied condition of a contrary theory, *i.e.,* the use of the term "CIO" as part of the name "UE" was so important as an element of the contract whereby persons became members of the UE (United Electrical, Radio and Machine Workers of America) that when National CIO expelled UE an implied condition of the contract was broken.

The Court of Appeals (7th Cir.) rejected this "implied condition" theory in the *Sessler*[7] case, 25 L. R. R. M. 2599, in which the Court found (1) that although the local may have enjoyed an autonomous and independent status prior to its affiliation with the UE, and the latter's affiliation with CIO, after affiliation it became subordinated to UE and could not disaffiliate and retain the property; and (2) there was no evidence upon which the Court could find either an express or implied condition that membership in UE is conditioned upon the constitution of the UE as a member and an affiliate of the CIO.

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[6]*Local 1140 I.U.E. v. U.E.*, 232 Minn. 217; *Clark v. Fitzgerald*, 93 N. Y. S. 2d 768; *Duris v. Iozzi*, 6 N. Y. Supp. 530; and *Bozeman v. Fitzmaurice*, 107 N. E. 2d 627.

[7]Certiorari denied, 341 U. S. 940 (1951).

III.

The International Had a Right to Issue a Charter to Local 1010, Since the Charter to Local 576 Granted No "Exclusive" Jurisdiction. The International Had a Duty to Protect Its Membership.

Petitioner argues that the issuance of a charter to Local 1010 constituted a breach of the agreement between the International and Local 576, since this would result in a diminution of the "jurisdiction" assigned to Local 576.

Under the Constitution and the charter no exclusive right was given or could have been given to Local 576. Any seven persons working at the trade could make application for and be granted a charter as a local union. The sole discretion as to when, how or under what circumstances a charter shall be issued is in the International President subject, in some cases, to the approval of the International's General Executive Board. There were no other limitations placed upon the International president in the exercise of his judgment, either in the International Constitution, the local by-laws or the Charter itself.

Since the Constitution did not authorize the President to issue an "exclusive" charter to Local 576, it cannot be inferred that he had an implied power to do so. Inferred or implied powers of a labor union must rest upon some provision of the Constitution, since it embodies its whole plan of existence. (*Amalgamated Clothing Workers of America v. Kiser*, 174 Va. 229, 125 A. L. R. 1251.) If the International had intended to issue exclusive grants,

the Constitution would have expressly authorized it to do so.

The International President is charged with the responsibility of interpreting the Constitution. His decision in this respect is final and binding. After determining that the issuance of a charter was necessary and proper, and in an exercise of excessive, if not superfluous caution (since, under Article XLIII such a charter may cause a division of an existing local) he solicited and received the approval of the General Executive Board.

In *Harrison v. Railway and Steamship Clerks,* 34 L. R. R. M. 2415 (June 23, 1954), the Kentucky Court of Appeals had been asked to reverse a labor union's expulsion of a member who had violated union policy, on the ground that there had been a misinterpretation of the Union's Constitution. The Court said:

> "Apparently this was the construction adopted by appellees' (union's) authorized officers, and as pointed out in *Norfolk v. W. Ry. Co. v. Harris,* 260 Ky. 132, 84 S. W. 2d 69, the Courts should hesitate to upset a labor organization's interpretation of its own Constitution and by-laws." (See also, *Naylor v. Hawkins,* N. J. Sup. Ct., Chanc. Div. (Oct. 16, 1953), 33 L. R. R. M. 2071; and *DeMille v. AFRA, supra.*)

The International had the right to establish Local 1010, even in the face of opposition or objections of Local 576 that the issuance of such a charter would deprive Local 576 of its "jurisdiction." In a dispute as to which of two locals should have jurisdiction, the courts uniformly maintain that the determination made by the International is binding. (*Green v. Obergfell,* 121 F. 2d 46; *Lawsen v. Hewell,* 118 Cal. 613,; and *Lousford v. Burton,* Ore. Sup. Ct. (Feb. 24, 1954), 34 L. R. R. M. 2100.)

In the *Lonsford* case the International union amended the jurisdiction of a local union, without the knowledge or consent of the local, and plaintiffs sought to restrain the international. The plaintiffs (local members) alleged:

> "It is further alleged that the defendants (Inter national) have deprived Local 401 of all its jurisdiction which was given to it under its charter, and that such jurisdiction has been transferred to Local 72 of Portland, Oregon."

The decision of the Court, on the question of the International's authority to amend, said:

> ". . . Upon the merits, a major issue relates to the legal power of the International to 'amend' the charter of Local 401 in respect to jurisdiction. This is a clear question of law under the constitution of the International. That constitution provides:
>
> " 'The International President shall hear and decide all questions of constitutional law submitted to him by any District, State or Subordinate Lodge, and all decisions shall be binding until finally passed on by the Executive Council, or the International Brotherhood Convention.'
>
> "There is substantial evidence in the record indicating a practical construction of the constitutional provision authorizing such changes in jurisdiction under the power to amend."

In California the law is the same. In *DeMille v. AFRA, supra,* that Court said:

> "The practical and reasonable construction of the Constitution and by-laws of a voluntary organization by its governing body is binding on the membership and will be recognized by the Courts."

The common objectives of both the local and the International was to enter into collective bargaining agreements with employers "and to seek through such agreements to establish maximum job and union security for *members* of the United Furniture Workers of America." These objectives could best be obtained by the issuance of the Charter to Local 1010. There was no frustration of the desired object of the contract. (*Brown v. Oshiro,* 68 Cal. App. 2d 393, 397; *Edwards v. Leopoldi,* N. J. Sup. Ct., App. Div.; 30 L. R. R. M. 2425, 2435 (1952).)

The International was obligated to issue the new charter to its members who desired to be free of the leadership of Local 576. It was President Pizer's duty to protect the International, its members and membership. (*Naylor v. Hawkins, supra; Lawsen v. Hewell, supra,* and *DeMille v. AFRA, supra.*)

Conclusion.

This proceeding raises no questions of federal law and it is respectfully submitted that the Petition for Hearing by the Supreme Court should be denied.

Respectfully submitted,

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